

CLEAN SERVE INTERNATIONAL, INC.**CONTRACT NO. V757P-0248****VABCA-5481****VA OUTPATIENT CLINIC
COLUMBUS, OHIO**

Wallace Johnson, Owner, Clean Serve International, Inc., Columbus, Ohio for the Appellant.

Merilee D. Rosenberg, Esq., Trial Attorney; *Charlma O. Jones, Esq.*, Deputy Assistant General Counsel; and *Phillipa L. Anderson, Esq.*, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

OPINION BY ADMINISTRATIVE JUDGE McMICHAEL

Clean Serve International, Inc. (CSI or Contractor) appealed a claim in connection with Contract No. V757P-0248 which was docketed on February 27, 1998, and assigned docket number VABCA-5481. The claim requested an equitable adjustment of \$206,930.75, plus interest.

FINDINGS OF FACT

CSI provided housekeeping and janitorial services under Contract No. V757P-0248 at the VA Outpatient Clinic, Columbus Ohio. On February 27, 1998, the Board received a letter addressed to it from Wallace Johnson, President of CSI indicating that the Contractor was submitting a "[c]laim under the *Contract Disputes Act* for alleged bad faith and improper contract actions." The claim submission contained a request for an equitable adjustment of \$206,930.75, plus interest, and included a list and narrative statement explaining ten items that CSI asserted as the bases of its claim, including:

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|---|-----------------|
| 1. Last 7 months of contract | 83,011.25 |
| 2. Months withheld (man hour deduction) | 72,497.00 |
| 3. Hours worked not paid | 1,214.00 |
| 4. Improper fixed price | 6,045.00 |
| 5. Canteen, kitchen dining areas | 22,862.00 |
| 6. Recycle materials | 5,715.00 |
| 7. Stainless steel maid carts | 4,959.00 |
| 8. Withheld payroll dollars | 3,641.00 |
| 9. Would not release funds (supplies) | 3,003.81 |
| 10. VA OPC 10% retainage | <u>3,982.69</u> |

TOTAL **\$206,930.75**
Plus Interest

A review of the document lead the Board to question whether the claim had been submitted to the Contracting Officer, and we issued an Order to Show Cause why the Board should not dismiss VABCA-5481 for lack of jurisdiction pursuant to Board Rule 5.

CSI responded to our Order on April 5, 1998, averring:

Clean Serve International did in fact submit to the contracting officer a claim for housekeeping and janitorial services on February 27, 1998 via fax, certified mail and courier to insure receipt. This claim was the same claim which was submitted to your office on February 27, 1998. Additionally, this claim was indeed made in good faith with supporting data being accurate and complete to the best of my knowledge. The amount requested does accurately reflect the contract adjustment which the government is liable. This information is provided to show cause why the Board should not dismiss VABCA-5481.

DISCUSSION

The *Contract Disputes Act of 1978 (CDA)* provides the statutory framework for, and the basis of, this Board's jurisdiction over claims made by the Contractor against the Government. 41 U.S.C. §§ 601-613. Specifically, section 605 (a) provides that "[a]ll claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision." Once a proper claim is submitted to a contracting officer, 41 U.S.C. § 605(c) sets forth the requirements for a final decision.

As we held in *Bridgewater Construction Corporation*, VABCA Nos. 2866 *et al.*, 90-2 BCA ¶ 22,764 at 114,264, in order to invoke the jurisdiction of the Board the contractor must "(1) submit to the contracting officer a written demand asserting specific rights and relief; (2) specify the monetary compensation sought; and (3) demand a final decision or certify the claim where necessary, in accordance with the requirements of the CDA." *Accord Reflectone, Inc. v. John H. Dalton*, 60 F.3d 1572 (Fed. Cir. 1995).

Once a claim is submitted to the Contracting Officer, 41 U.S.C. § 605 allows the Contracting Officer sixty days (or a "reasonable time" for claims in excess of \$100,000) to issue a decision on the claim. In the absence of a decision or the expiration of the time within which a decision must be issued, the Contractor's claim is not ripe for adjudication and the Board does not have jurisdiction over the claim. *Paragon Energy Corp. v. United States*, 645 F.2d 966, 967 (Ct. Cl. 1981); *White Plains Iron Works, Inc. v. United States*, 229 Ct. Cl. 626 (1981); *Briener Construction Company, Inc.*, VABCA No. 5461, 98-1, BCA ¶ 29,492.

Because the appeal was filed with this Board prior to the expiration of the time allowed for the Contracting Officer to consider the claim, this Board is without jurisdiction to consider the matter. Although we understand that a claim is now awaiting a decision by the Contracting Officer, it will be necessary for the Contractor, if dissatisfied with that decision, to appeal that decision pursuant to the options available to it under the Contract. Once the Contracting Officer issues a final decision or fails to issue a final decision as required by 41 U.S.C. § 605, CSI may either appeal that decision to our Board or to the Court of Federe